IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUMMONS FOR JUDGMENT NO. 77 OF 2007
IN
SUMMARY SUIT NO. 3302 OF 2006

Corporation Bank. ... Plaintiff.

V/s.

Nafeesa Abdul Shahid Shaikh. ... Defendant.

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Mr. C.M.G. Shastri for the Plaintiff.
Mr. A.S. Urazi for Defendant 2.

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CORAM : DR. D.Y.CHANDRACHUD,J.

03rd April 2007.

P.C. :

. On 5th August 1991 the First Defendant opened a Savings Bank Account (bearing no.7795) with the Plaintiff. On 16th May 2006, the First Defendant deposited a cheque, bearing no.220115, dated 23rd January 2006 in the amount of Rs.30,000/- drawn on U.T.I. Bank Limited for collection. The cheque was drawn by the Second Defendant in favour of the First Defendant. The cheque was remitted by the Plaintiff for clearance on 17th May 2006. In the meantime, on the representation of the First Defendant, the Plaintiff allowed the First Defendant to withdraw the amount of the said cheque

before payment was received in the course of clearing from the drawee bank. The cheque was duly paid by the drawee bank in the course of clearance on 17th May 2006.

2. The case of the Plaintiff is that on 17th May 2006, the First Defendant once again deposited another cheque bearing no.220114 dated 28th March 2006 in the amount of Rs.63,950/- drawn on U.T.I. Bank Limited by the Second Defendant in favour of the First Defendant. The cheque was submitted by the Plaintiff for clearance on 18th May 2006. As in the case of the earlier cheque, on the request by the First Defendant, the Plaintiff allowed the First Defendant to withdraw an amount of Rs.64,000/- by cheque no.588670 drawn by the First Defendant upon the said Savings Bank Account, against the earlier cheque which was in the amount of Rs.63,950/- and which was sent for clearance on the previous day. Upon presentation, cheque no.220114 dated 28th March 2006 in the amount of Rs.63,950/- was returned unpaid by the drawee Bank on 20th May 2006 on the ground that funds were insufficient.

3. On 20th May 2006, the First Defendant executed a Demand Promissory Note in the amount of Rs.63,950/- payable to the Plaintiff. By a letter dated 24th May 2006, the Plaintiff intimated the First Defendant about the dishonour of the cheque of Rs.63,950/- and demanded the payment of the outstanding due in the Savings Bank Account. The aforesaid cheque (220114) dated 28th March 2006 in the amount of Rs.63,950/- was presented once again for clearance to the drawee Bank on 21st July 2006. The cheque was however returned unpaid on 22nd July 2006 on the ground that the payment had been stopped by the drawer viz. by the Second Defendant.

4. The Plaintiff has in the suit which has been instituted under the provisions of Order 37 of the Code of Civil Procedure 1908 submitted that the Bank had become the holder in due course of the aforesaid cheque under the provisions of the Negotiable Instruments Act, 1881 and that both the First and Second Defendants were liable thereon. Notices of demand were addressed on 28th July 2006

to the First and Second Defendants. The First Defendant by an Advocate's reply dated 11th September 2006 admitted that the cheque was deposited and that the First Defendant withdrew an amount of Rs.64,000/- on 19th May 2006. However, the defence was that the cheque was deposited on 16th May 2006 and between that day and the date of withdrawal, 3 days had lapsed. Consequently, it was alleged that the Bank had been negligent in not having obtained clearance of the cheque within the aforesaid period.

5. In reply to the Summons for Judgment, it is submitted on behalf of the Second Defendant that the Second Defendant had no dealing either with the Bank or with the First Defendant. Counsel submitted that there was an unusual relationship between the brother of the Second Defendant and the First Defendant and in March 2006, certain cheques were issued by the Second Defendant to the First Defendant. There is no merit in the defence whatsoever. The Second Defendant admits that he has signed the cheques. The defence that the cheque was blank would not advance the defence of

the Second Defendant. Section 20 of the Negotiable Instruments Act, 1881 provides that where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instrument and either wholly blank or having written thereon an incomplete negotiable instruments, he thereby gives prima-facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The Second Defendant as a person so signing is liable upon such instrument, in the capacity in which he signed the same, to any holder in due course within the meaning of Section 9 of the Negotiable Instruments Act. The defence that there was no privity between the Second Defendant and the Plaintiff similarly is of no outstance. Under Section 36 every prior party to a negotiable instrument is liable thereon to a holder in due course until the instrument is duly satisfied. Similarly, under Section 37, the maker of a promissory note or cheque, the drawer of a bill of exchange until acceptance, and the acceptor are, in the absence of a contract to the

contrary liable thereon as principal debtors. Finally, under Section 43, a negotiable instrument made, drawn, accepted, indorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction. But if any such party has transferred the instrument with or without indorsement to a holder for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto. The Second Defendant who has drawn the cheque therefore cannot escape from his liability.

6. Insofar as the First Defendant is concerned, in the Advocate's letter dated 11th September 2006, the First Defendant has admitted that the amount of the cheque of Rs.63,950/- was deposited and that an amount of Rs.64,000/- was received on 19th May 2006. The First Defendant has been served and has not filed any defence to the Summons for Judgment. the only defence that is raised in the reply to the notice for demand is lacking in any substance.

7. Counsel appearing on behalf of the Plaintiff has tendered the original documents which are taken on record. The claim of the Plaintiff is duly established on the basis of the evidence on record. There is no valid or tenable defence to the suit that would entitle the Second Defendant to leave to defend the suit. In the circumstances, the suit shall stand decreed in terms of prayer clauses (a) and (b) subject to the modification that the Plaintiff would be entitled to interest at the rate of 9% per annum from the date of the institution of the suit until payment or realisation.